

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 1, 2005

To: The Commission
(Meeting of April 7, 2005)

From: Delaney Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: SB 641 (Campbell) Electricity: electrical restructuring
As Introduced February 22, 2005

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support

SUMMARY: This bill would eliminate (as of January 1, 2007) the current suspension of direct access. It would allow direct access to resume on that date under a Core/Non-Core market structure. The legislation would leave it to the Commission to determine the structure of the core/noncore market. The only legislative requirement imposed by SB641 is that the Commission ensures that new direct access customers either continue to pay a fair share of the above market DWR contract costs or assume a proportionate share of the costs and output of these contracts.

DIGEST: Existing law (the Public Utilities Act) requires the Commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, existing law (Water Code Section 80110) also suspends the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers for a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the suspension of direct transactions and would require that the commission, on or before January 1, 2007, reestablish the right of end-use customers to enter into direct transactions.

This bill would provide that, notwithstanding other laws, the right of end-use customers to enter into direct transactions is to be pursuant to a core/noncore structure, to be defined by the Commission. In implementing the core/noncore structure, the commission would be required to ensure that end-use customers that enter into direct

transactions bear a fair share of the department's costs to purchase electricity or to accept a proportionate allocation of the electrical generation resources used by an electrical corporation to serve departing customers.

DIVISION ANALYSIS (DSP): SB641 provides broad policy guidance to the Commission. The only legislative requirement imposed by SB641 is that the Commission ensure that new direct access customers either continue to pay a fair share of the above market DWR contract costs or assume a proportionate share of the costs and output of these contracts.

In its report to the Legislature on Core/Noncore market structures, the Strategic Planning Division identified a number of issues that any core/noncore market structure needs to address. These include:

- Resource adequacy
- Stranded cost recovery
- Switching rules
- Default service/Provider of Last Resort (POLR); and
- Effect on Renewable Energy Development

As written, SB641 would defer implementation of these issues to the Commission. It appears that, other than the current legislative suspension of direct access by Water Code 80110, the Commission could implement a core/noncore market structure under its existing authority.

Stranded Cost Recovery

The only issue specifically addressed in SB641 is the requirement that direct access customers either continue to pay their fair share of above-market DWR contract costs or assume a proportionate share of the costs and output of the DWR contracts.

Currently, direct access customers are responsible for a fair share of above-market DWR contract costs as well as continuing CTC obligations (almost entirely above market QF costs). Additionally, the Commission has stated that if the direct access market is re-opened, new direct access customers who are currently taking bundled service are responsible for their share of any costs or long-term commitments made on their behalf by the utility. In several decisions (D.04-06-011 – SDG&E RFP; D.03-12-059 – Edison Mountainview; and D.04-12-048 – Procurement), the Commission has stated that any new direct access customers would be responsible for any stranded costs for up to 10-years (in the case of fossil-fueled investments) and for the life of the contract in the case of renewable investments.

SB641 would continue the requirement that non-core customers are responsible for their share of above-market DWR costs and on-going CTC obligations but is not clear

on the obligation of new non-core customers to assume their share of utility-incurred obligations. This section of the legislation needs to be clarified.

As an alternative to paying for their share of above-market DWR costs, SB641 would allow noncore customers to assume their proportionate share of the costs and output of the DWR contracts. AB1704 contains a similar provision, however the language in SB641 is clearer and more accurately describes how such an allocation would work. The language from SB641 should be incorporated into AB1704.

Additionally, while there is a certain degree of equity and fairness in allowing noncore customers to receive a proportionate share of the total cost and output of the DWR contracts, actual implementation of this proposal raises a number of difficulties.

The CRS, for example, is based not only on the above market cost of DWR contracts but also includes on-going CTC costs (primarily above-market QF costs) as well as the offsetting benefits of below-market utility-retained generation (such as hydro). Thus, there is not a direct nexus between CRS payments and DWR contract obligations.

It is also operationally difficult to allocate DWR contracts to specific customers. The DWR contracts vary both as to type (i.e. baseload, load-following, peaking) as well as by contractual terms (i.e. must-take, dispatchable, fixed or variable price).¹ There is also a mismatch between when DWR power is delivered (in many cases under 24-hour around the clock contracts) and when non-core customers are likely to need power (primarily Monday-Friday during business hours). Under current conditions, for instance, the utilities already have to sell excess DWR power during some hours of the day. It is unclear if non-core customers would have to assume this obligation as part of their assumption of their proportion of the DWR contracts.

Recommended Amendments: N/A

LEGISLATIVE HISTORY

In the last session, Assemblyman Richman had a similar bill to re-open the electric market to competition (AB428). Assembly Speaker Nunez also had a bill that would have created a core/noncore market structure, AB2006. AB2006 was passed by the Legislature and vetoed by Governor Schwarzenegger. In his veto message, the Governor stated his support for a core/non-core market structure but disagreed with numerous other provisions in AB2006.

¹ The legislation would appear to allow green choice customers to receive a proportionate share of DWR contract energy despite the fact that almost all DWR energy is not from renewable energy sources.

STATUS:

Assigned to Senate Energy, Utilities & Communications – no hearing date set.

SUPPORT/OPPOSITION

Support: Constellation New Energy

Opposition: None reported at time of analysis

STAFF CONTACTS:

Delaney Hunter
OGA

dlh@cpuc.ca.gov
(916) 327-7788

James Hendry
DSP

jeH@cpuc.ca.gov
(415) 703-2692

Date: April 1, 2005

BILL LANGUAGE:

BILL NUMBER: SB 641 INTRODUCED
BILL TEXT

INTRODUCED BY Senator Campbell

FEBRUARY 22, 2005

An act to amend Section 80110 of the Water Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as introduced, Campbell. Electricity: electrical restructuring.

The existing Public Utilities Act requires the Public Utilities Commission pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, existing law also suspends the right of retail end-use customers, other than community choice aggregators, as defined, to acquire service from certain electricity suppliers for a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law.

This bill would delete the suspension of direct transactions and would require that the commission, on or before January 1, 2007, reestablish the right of end-use customers to enter into direct transactions. The bill would provide that, notwithstanding other laws, the right of end-use customers to enter into direct transactions is to be pursuant to a core/noncore structure, to be defined by the commission. In implementing the core/noncore structure, the commission would be required to ensure that end-use customers that enter into direct transactions bear a fair share of the department's costs to purchase electricity or to accept a proportionate allocation of the electrical generation resources used by an electrical corporation to serve departing customers.

Under existing law, a violation of the Public Utilities Act or an order or direction of the commission is a crime.

Because the existing provisions for electrical restructuring are a part of the act and the implementation by the Public Utilities Commission of a core/noncore structure for direct transactions that is required by the bill would require an order or decision of the commission, the bill would impose a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 80110 of the Water Code is amended to read:

80110. The department shall retain title to all power sold by it to the retail end use customers. The department shall be entitled to recover, as a revenue requirement, amounts and at the times necessary to enable it to comply with Section 80134, and shall advise the commission as the department determines to be appropriate. Such revenue requirements may also include any advances made to the department hereunder or hereafter for purposes of this division, or from the Department of Water Resources Electric Power Fund, and General Fund moneys expended by the department pursuant to the Governor's Emergency Proclamation dated January 17, 2001. For purposes of this division and except as otherwise provided in this section, the Public Utility Commission's authority as set forth in Section 451 of the Public Utilities Code shall apply, except any just and reasonable review under Section 451 shall be conducted and determined by the department. The commission may enter into an agreement with the department with respect to charges under Section 451 for purposes of this division, and that agreement shall have the force and effect of a financing order adopted in accordance with Article 5.5 (commencing with Section 840) of Chapter 4 of Part 1 of Division 1 of the Public Utilities Code, as determined by the commission. In no case shall the commission increase the electricity charges in effect on the date that the act that adds this section becomes effective for residential customers for existing baseline quantities or usage by those customers of up to 130 percent of existing baseline quantities, until such time as the department has recovered the costs of power it has procured for the electrical corporation's retail end use customers as provided in this division. ~~After the passage of such period of time after the effective date of this section as shall be determined by the commission, the right of retail end use customers pursuant to Article 6 (commencing with Section 360) of Chapter 2.3 of Part 1 of Division 1 of the Public Utilities Code to acquire service from other providers shall be suspended until the department no longer supplies power hereunder.~~

The Public Utilities Commission shall, on or before January 1, 2007, reestablish the right of end-use customers to enter into direct transactions. Notwithstanding any other provision of law, the right of end-use customers to enter into direct transactions shall be pursuant to a core/noncore structure, to be defined by the Public Utilities Commission. The core/noncore structure implemented by the Public Utilities Commission shall require that end-use customers that enter into direct transactions bear a fair share of the department's costs to purchase electricity or to accept a proportionate allocation of the electrical generation resources used by the electrical corporation to serve the departing customer. The department shall have the same rights with respect to the payment by retail end use customers for power sold by the department as do providers of power to ~~such~~ those customers.

SEC. 2.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.